page 1 (5)

C/F 100

IN THE HONOURABLE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION No. 1643/ 2001.

PETITIONER: Ramhai Singh S/o Kanwal Singh, Cast: Kanwar (S/T), aged about 38 years, R/o Chhuiha-Pahargaon, Tahsil: Kartala, District: Korbá, Chattisgarh.

Versus

RESPONDENTS:
01. State of Chhattisgarh, through it's Principal Secretary, Dept. of Panchayat & Social Welfare. DKS Bhawan, Raipur, Chhattisgarh.

02. Collector, Korba, Chhattisgarh.

03. Sub Divisional Officer & Prescribed Officer under Panchayat Raj Adhiniyam, Korba, Chhattisgarh.

Writ Petition under article 227/ 226 of Constitution of India.

A.F.R

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No.1643 of 2001

Ramhai Singh
Versus
State of Chhattisgarh and others

Present: Hon'ble Mr.Justice Fakhruddin,Ag. C.J.

For petitioner: Shri K.K. Naik, Advocate.

For respondents Shri Ranbir Singh G.A. with Shri Rajiv Shrivastava, Adv.

For intervener: Shri Yashwant Tiwari, Adv.

ORDER

By the instant petition filed under Article 226/227 of the Constitution of India petitioner calls in question the legality, validity and propriety of the impugned order dated 17.8.2000 passed by respondent no.3,Sub Divisional Officer/ Prescribed Officer under the Panchayat Raj Adhiniyam by which no confidence motion against the petitioner was rescheduled for 27.8.2001. The petitioner further states that though a revision against the aforesaid order was filed before the Collector, Korba, but the same having not been considered in time, has become infructuous.

2. The facts giving rise to filing of this petition are that the petitioner was elected as Sarpanch of Gram Panchayat Pahadgaon. On a no confidence motion moved by few Panchas, the Prescribed Authority, respondent no.3 directed the Additional Tehsildar, Karatala , to convene a meeting of Panchas on 8.8.2001 to consider the no confidence motion. However, on the said date, according to the petitioner, for want of quorum the no confidence motion could not be taken up and accordingly the Additional Tehsildar submitted his report to the Sub Divisional Officer stating that because of the tense law and order situation prevailing in the village at the relevant time the no confidence motion could not be taken up therefore a request was made for fixing another date for casting votes on the no confidence motion against the petitioner. On receipt of the aforesaid report from the Additional Tehsildar, respondent no.3 by the impugned order dt. 17,.8.2001 fixed 27.8.2001 as the next date for considering the no confidence motion against the petitioner.

3. Feeling aggrieved by the order passed by respondent no.3 rescheduling the voting on no confidence motion against the petitioner and fixing another date as 27.8.2001 for the purpose, the petitioner filed a revision petition before the Collector, respondent no.2 on 25.8.2001. However, the Collector did not pass any order on the revision before 27.8.2001 and as such the voting on no confidence motion took place on the date rescheduled as

27.8.2000 in which out of 10 members present 9 have voted in favour of the no confidence motion.

4. Learned counsel for the petitioner submits that the impugned order adjourning the meeting fixed for no confidence motion is contrary to the provisions of section 21 (3) of the M.P. Panchayat Raj Adhiniyam, 1993 and also in violation of the principles of natural justice and as such the same is liable to be quashed.

5. On the other hand, learned counsel for the respondents as also the intervener support the impugned order and submit that there is no violation of the provisions of the Adhiniyam , the order adjourning the meeting for no confidence motion was valid and thus on 27/8/2001 the no confidence motion was validly passed against the writ petitioner as majority of the members present have voted in favour of no confidence motion. In the said connection reliance was placed on the Division Bench decision in *Muku Bai Vs. State of M.P. and others* (1998(2) MPLJ 661) as also the decision in *Kaushalya Vs. Additional Collector* (1998(1) MPWN Note No.236).

6. In the case of *Muku Bai* (Supra) the Division Bench held that "No confidence motion – Requirement to convene meeting within 15 days as provided in Rule is mandatory – Such meeting can be adjourned because of reasons beyond control". The relevant observations made

(108)

by the Division Bench in the said case in para 10 read as under :

"The next question that arises for consideration is whether the meeting fixed for no confidence motion can be adjourned or not. We have already quoted Section 21 of the Act 1994. If the meeting of no confidence motion has been convened then can it be adjourned or not ? Section 21 of the M.P. General Clauses Act, 1957, which is relevant for our purpose, reads as under :

'21. Power to make, to include, power to add, to amend, vary or rescind orders, etc.- *Where, by any Madhya Pradesh Act, a power to issue notification, orders, rules or bye laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to amend, vary or rescind any notifications, orders, rules or bye laws so issued.'*

Therefore, invoking Section 21 of the Act of 1957, which enables the

authority which passes the orders can revoke, amend, rescind; therefore, the prescribed authority which fixes the date of no confidence can adjourn it also. As quoted above, Section 21 or Section 44 of the Act or the Rules framed there under, nowhere prohibit the prescribed authority to adjourn the meeting. Therefore, the meeting of no confidence motion can be adjourned. It is not right to say that if the meeting has been once convened within the statutory period, then it cannot be adjourned, the Rule 3 (3) will not bar it. If it is to be interpreted that if meeting of no confidence is convened within 15 days and on account of law and order problem or for other unavoidable reasons, the motion cannot be debated then the bar of 15 days under Rule 3(3) will come in the way that the meeting cannot be convened that will amount to shifting the democratic process. Therefore, we hold that under Rule 3 (3), the convening of meeting within 15 days is must, it is a mandatory and if the meeting which is convened within 15 days could not proceed because of the

reason beyond control of the prescribed authority, it can be adjourned and the bar of Rule 3(3) will not come in the way."

7. Having thus considered the facts and circumstances of the case, particularly in view of the Division Bench decision referred to above, it is held that there is no irregularity or illegality in adjourning the date of no confidence motion, which had occasioned due to law and order problem prevailing in the village and as such the meeting was adjourned because of reasons beyond control.

8. For the reasons aforesaid, the petition fails and is hereby dismissed.

Sd/-
Acting Chief Justice

29/01/2002

BM/J